Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

RITA FULLER, BABBETTE THAYER, THOMAS WILSON, and the class of similarly situated persons who have worked aboard the F/T MICHELLE IRENE,

Petitioners,

v.

GOLDEN AGE FISHERIES, SIMONSON ENTERPRISES V, INC., MICHELLE IRENE JOINT VENTURE, WESTCOD II, INC., BTI IV, INC., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

14 F.3d 1405

Rita Fuller, Babbette Thayer, Thomas Wilson, and the class of similarly situated persons who have worked aboard the F/T Michelle Irene,

Plaintiffs-Appellants,

v.

Golden Age Fisheries, Simonson Enterprises V, Inc., Michelle Irene Joint Venture, Westcod II, Inc., BTI IV, Inc., et al.,

Defendants-Appellees.

No. 92-35330.
United States Court of Appeals,
Ninth Circuit

Appeal from
the United States District Court for the Western District of Washington
Barbara J. Rothstein, District Judge, Presiding

Argued and Submitted Nov. 3, 1993
Decided Jan. 24, 1994

Before: WRIGHT, GOODWIN and HUG, Circuit Judges.

OPINION

GOODWIN, Circuit Judge:

Rita Fuller, Babbette Thayer, and Thomas Wilson ("plaintiffs") appeal a summary judgment for Golden Age Fisheries, Inc., et al. ("defendants") in plaintiffs' action for unpaid wages as crewmembers on several Alaskan fishing voyages.

The district court held that the plaintiffs' *in rem* claims against the vessel were time-barred under 46 U.S.C. § 10602(a). The court also held that plaintiffs' *in personam* wage claims were time-barred under a provision in their employment contracts. Finally, the court held that federal law preempted plaintiffs' minimum wage and overtime claims under Alaska state law. The district court had jurisdiction under 28 U.S.C. § 1333. We have jurisdiction under 28 U.S.C. § 1291, and affirm.

Plaintiffs worked aboard the defendant vessel, F/T PACIFIC ORION, formerly the MICHELLE IRENE (the "MICHELLE IRENE"), at times during the period from September 23, 1989, through November 21, 1990. They brought this action on behalf of approximately 300 seamen and women who were employed as processors and crewmembers and who dispute the division of proceeds from the sale of fish.

The MICHELLE IRENE, a factory trawler whose home port is Seattle, is engaged in the catching and processing of fish at sea. Golden Age Fisheries managed the vessel. The vessel fished off the coast of Alaska during the period covered by this action. Neither fishing nor processing was conducted within three miles of the shoreline of Alaska. The time in port while unloading fish and loading supplies was usually two to three days; trips at sea were typically two to three weeks.

The processed fish was typically unloaded in Dutch Harbor, Alaska, onto a Japanese tramper. The bulk of the product was then shipped to Japan, where it was sold by a commission sales broker. A portion of the catch was sold in the United States. All of the catch harvested between September 23, 1989 and November 21, 1990, was sold by January 31, 1991.

Plaintiffs signed written employment contracts that said they would be paid "crewshares" based on a percentage of the estimated fair market value of the catch. Each contract contained a six-month requirement for asserting claims against the vessel owners.[1] The contract had a choice

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[1]Two different versions of the limitations provision were used during the period at issue. One form of the contract said: "The Crewmember agrees that any legal actions taken by him/her in connection with this Contract shall be brought within six (6) months after the date of the action or shall thereafter be waived. Parties waive any and all rights to attorneys fees."

The other version stated: "Any claim for money arising out of this agreement or employment relationship between crewmember and owner shall be made

of law provision that selected Washington as the governing law.

Plaintiffs brought this action on October 6, 1991. They allege that defendants underestimated the value of the fish, thereby reducing the value of their crewshares and breaching the wage terms of the contract. They also allege that defendants failed to distribute to the crew its agreed percentage of that allegedly underestimated value. Finally, they contend that defendants failed to pay them the minimum wage required under Alaska law.

We review a grant of summary judgment de novo. *Jones v. Union Pacific R.R.*, 968 F.2d 937, 940 (9th Cir.1992).

ANALYSIS

1. *Applicability of 46 U.S.C. § 10602*

Fishing vessels and fish processing ves-

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made in writing within six (6) months after this agreement is completed or terminated; otherwise, such claim shall be waived."

sels weighing at least twenty tons and voyaging from a United States port must enter into a written fishing agreement with each seaman employed on board the vessel. 46 U.S.C. § 10601(a). Each agreement must be signed by the vessel's owner and must include certain delineated terms of the seaman's employment. *Id.* §§ 10601(b) and (c).

Section 10602(a) provides for an *in rem* action against the vessel for unpaid wages. This section allows the seaman to place a lien on the vessel to recover a share of the ship's proceeds. The section reads:

> When fish caught under an agreement under section 10601 of this title are delivered to the owner of the vessel for processing and are sold, the vessel is liable in rem for the wages and shares of the proceeds of the seaman. *An action under this section must be brought within six months after the sale of the fish.* (emphasis added)

The plaintiffs do not dispute that the six-month limitation period had already run when they filed this suit.[2] Instead, they argue that Congress never intended § 10602 to limit the ancient right of fishermen under general maritime law to place a lien on the vessel as security for wages. Citing the history of the section, they contend that § 10602 merely provides a cumulative *in rem* remedy for cod and mackerel fishermen.[3]

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[2]All of the fish caught during the relevant time period was sold by January 31, 1991. Plaintiffs' complaint was not filed until October 16, 1991, eight and one-half months later.

[3]Plaintiffs claim that the predecessor of § 10602 was restricted to the cod and mackerel fisheries and was designed to ensure that fishermen got their share of salt allowances or bounties that the federal government paid to those engaged in such fisheries. *See* 46 U.S.C. § 533 (*repealed by* Commercial Fishing Vessel Safety Act of 1988, P.L. 100-424, § 6(c), 102 Stat. 1592 (Sept. 9, 1988)). They claim that during the 1988 revision of the statute, no representative or senator mentioned the purported changes in the scope of the section. They argue this lack of discussion belies any inference that Congress intended to make a major change in the law of seaman's wage claim remedies.

To support their argument, plaintiffs cite the savings clause in § 10602(c), which reads: "This section does not affect a common law right of a seaman to bring an action to recover the seaman's share of the fish or proceeds. "The district court concluded that the savings clause merely preserves a seaman's common law right to bring an action for wages when there is no written agreement under § 10601. An alternative reading is that the savings clause preserves a seaman's right to proceed *in personam* against the vessel's owners for breach of a written or oral fishing agreement.

[1] We need not decide the preferred reading of the savings clause because the plaintiffs' argument fails under either reading. Their argument would undermine 46 U.S.C. § 10601 *et seq.* altogether. They have cited no congressional history to support their limited view of the stat-

ute, and a plain reading of the language does not support their position. When congressional legislation directly addresses a question, that legislation preempts existing federal common law. *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, (1978).

[2] Thus, we affirm the district court's holding that § 10602 applies. Because the plaintiffs did not file their *in rem* claim within the six-month period, it is barred.[4]

2. *Contractual Time Limitation*

We next consider whether the trial court erred by enforcing a time-limitation

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[4]Plaintiffs also argue that they are outside the reach of the statute because § 10602 applies only in cases when the "fish ... are delivered to the owner of the vessel for processing and are sold." They contend that the statute does not apply to factory trawlers, such as the MICHELLE IRENE, where the processing was done on board the ship. This argument is without merit. First, § 10601(a) specifically applies to "fish processing vessel[s]." Second, because the owners of the MICHELLE IRENE own the boat as well as its fish processing equipment, the fish were delivered to the owners for processing.

provision in plaintiffs' employment contracts. The provision required them to assert any claims over their wages within six months after the voyage ended.

Plaintiffs contend that seamen's wage claims historically have been governed by the equitable doctrine of laches. They argue that by signing contracts with a six-month claim limitation, they severely restricted their rights. They contend that this waiver of rights was neither knowing nor intelligent, and was both unfair and unreasonable.

Plaintiffs argue that courts must closely scrutinize contracts limiting the rights of seamen. They rely on a long line of cases that describe seamen as "wards of the court" needing special protections from potentially overreaching ship owners. *See Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248, (1942); *Harris v. Pennsylvania R. Co.*, 50 F.2d

866, 868 (4th Cir.1931); *Harden v. Gordon*, 11 F. Cas. 480, 485 (C.C.D. Me. 1823) (No. 6,047).

The Fifth Circuit recently relied on the doctrine providing special protection for seamen in *Castillo v. Spiliada Maritime Corp.*, 937 F.2d 240 (5th Cir. 1991). In *Castillo*, the court said:

> Historically, seamen have enjoyed a special status in our judicial system. They enjoy this status because they occupy a unique position. A seaman isolated on a ship on the high seas is often vulnerable to the exploitation of his employer. Moreover, there exists a great inequality of bargaining position between large shipowners and unsophisticated seamen. Shipowners generally control the availability and the terms of employment.

Id. at 243. We have no quarrel with the traditional view admiralty courts employ in reading articles of employment.

Whoever drafts a limitation of rights must prove that it "was executed freely, without deception or coercion, [ ] that it was made by the seaman with full under-

standing of his rights" and that it is fair to the seaman. *Garrett*, 317 U.S. at 248.

[3] While the district court expressed some reservation about whether the special scrutiny for seamen's contracts was necessary in this case, it nevertheless found that the plaintiffs had sufficient education and experience to read and understand the contracts they signed and were given adequate opportunity to review and discuss their contracts prior to signing them.[5] There was no evidence of overreaching. Even if the evidence is viewed in the light most favorable to the nonmoving party, the plaintiffs failed to pres-

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[5]Both Fuller and Wilson were among the 246 class members in another class action against most of the same defendants, alleging similar fraudulent pay practices. *See Adamek v. Golden Age*, No. C89-1463R (W.D. Wash. 1989). When the Adamek case settled in 1991, the defendants paid the plaintiff class approximately $510,000, plus attorneys fees. Thayer admitted in deposition testimony that she was aware of the litigation dispute at the time she signed her contract with Golden Age Fisheries.

ent a genuine issue of material fact about whether the signing of the contracts involved fraud or coercion.

[4] The limitations period also was not unfair or unreasonable. Congress thought six months was reasonable when it passed § 10602, which sets forth a similar time limitation on bringing *in rem* claims. Thus, the ruling that the plaintiffs' *in personam* claims were time-barred was proper.

3. *Alaska Minimum Wage Claims*

Plaintiffs next contend that the district court erred in finding that federal law precluded their claims under the Alaska minimum wage and overtime statute. The Fair Labor Standards Act ("FLSA") provides an exemption from the Act's wage and overtime provisions for fishermen. It exempts persons employed in "catching ... any kind of fish ... or in the first processing [of the catch] at sea ... in conjunction with

... fishing operations." 29 U.S.C. § 213(a)(5). It also exempts "seamen" from the federal overtime provisions in FLSA. *Id.* § 213(b)(6).

Despite these express exemptions, plaintiffs contend that the Ninth Circuit's decision in *Pacific Merchant Shipping Ass'n v. Aubry*, 918 F.2d 1409 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 2956 (1992), compels us to rule that the FLSA does not preempt their wage and overtime claims.

In *Aubry*, we held that § 213(b)(6) does not preempt California from applying the state's overtime pay laws to certain maritime employees. *Id.* at 1417. We balanced the state and federal interests involved, and said that "states may supplement federal admiralty law as applied to matters of local concern, so long as state law does not *actually conflict* with federal law or *interfere* with the *uniform working*

of the maritime legal system." *Id.* at 1422 (emphasis in original).

We concluded that because the plaintiffs were residents of California who did not engage in "foreign, intercoastal, or coastwise voyages," application of the California labor statutes would not interfere with uniform application of federal admiralty law. *Id.* at 1426-27. Also key to our decision was the fact that the state of California had a "strong interest in protecting maritime employees that reside in the state and [who] work to protect California's coastal environment" through oil spill clean-up operations. *Id.*

Aubry is distinguishable from this case because it does not apply to coastwise voyages and turns on significant state interests not present in this case. Unlike the crewmembers in *Aubry*, plaintiffs here were engaged in coastwise voyages and

their predominant job situs was the high seas rather than the territorial waters of Alaska.[6]

Also important is the fact that plaintiffs here were not Alaska residents, unlike the California resident fishermen in *Aubry*. Here, the fishermen were generally hired and began their employment in Seattle, and at the conclusion of their employment, were typically flown back to Seattle. Their contact with Alaska was minimal compared to the extensive contact the *Aubry* plaintiffs had with the state of California.

[6] Finally, with regard to state interests, defendants submitted a letter from the Alaska Department of Labor indi-

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[6]The plaintiffs contend that coastwise voyages are not involved here because the MICHELLE IRENE left Dutch Harbor, Alaska, fished, and returned to Dutch Harbor." It did not travel up and down the coast." However, the MICHELLE IRENE's home port was Seattle; the voyage to Alaska included international waters; and much of the fishing was on the high seas.

cating that it does not generally exercise jurisdiction over factory trawlers when the employees are primarily hired to work outside of Alaska's borders and the work performed within the state's jurisdictional boundaries is only incidental. The district court correctly concluded that federal law preempts plaintiffs' Alaska state wage and overtime claims. For all of the foregoing reasons, the district court's judgment is **AFFIRMED**.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RITA FULLER, et al., Plaintiffs,	)	NO. C91-1438R
v.	)	ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND STRIKING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
GOLDEN AGE FISHEIRES, et al., Defendants.	)	

THIS MATTER comes before the court on the defendants' motion for summary judgment and on plaintiffs' motion for class certification. Having reviewed the motions, together with all documents filed in support and in opposition, having heard oral argument on defendants' motion for summary judgment, and being fully informed the court finds and rules as follows:

I. FACTUAL BACKGROUND

This lawsuit arises from a series of voyages of the F/T MICHELLE IRENE a catcher-processor which is owned and op-

erated by defendants.[1] Plaintiffs worked as crewmembers aboard the MICHELLE IRENE between September 23, 1989, and November 21, 1990. Most crewmembers signed employment contracts covering the period during which fishing trips were made. These agreements provided for compensation based on crewshares -- each crewmember's pay being based on his assigned share of the estimated value of the saleable seafood caught and processed by the vessel.

On October 16, 1991, plaintiffs filed this breach of contract action, alleging that defendants used an unreasonably low estimate of the fair market value of the fish caught during the time they worked and that they failed to pay the crew the full agreed percentage of the estimate. Plaintiffs also allege violation of Alaska

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[1]The MICHELLE IRENE is now named the F/T PACIFIC ORION. However, for purposes of this motion, the court will continue to refer to the vessel as the MICHELLE IRENE.

statutory minimum wage and overtime provisions.

This is the second suit in the last three years brought before this court by crewmembers of the MICHELLE IRENE against the vessel and its owners for breach of contract based on disagreements over the estimates of crewshares. *Adamek v. Golden Age Fisheries*, No. C89-1463R. Two of these three named plaintiffs, Rita Fuller and Thomas Wilson, were members of the plaintiff class in *Adamek*, which settled prior to trial. *See* Defendants' Memorandum in Support of Summary Judgment at 5 n.5; Declaration of Clemens H. Barnes, Exhibits 8, 13.

Defendants now move for summary judgment on all of plaintiffs' claims. Plaintiffs move for class certification.

II. DISCUSSION

A. Defendants' Motion for Summary Judgment

Defendants move for summary judgment on three grounds. First, they move for summary judgment on all of plaintiffs' claims on the grounds that plaintiffs did not bring their claims within the six-month period specified in their employment contracts. Second, they move for summary judgment on plaintiffs' *in rem* actions under 46 U.S.C. § 10602(a) on the grounds that plaintiffs did not bring their claim within the six-month period specified by that statute. Finally, defendants move for summary judgment on plaintiffs' Alaska minimum wage and overtime claims on the grounds that they are preempted by federal law or precluded by the contractual choice-of-law provision stating that all disputes arising under the contract are to be resolved according to Washington law.

1. Standard of Review

A grant of summary judgment is appropriate if it appears, after viewing the evidence in the light most favorable to the opposing party, that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *See, e.g., T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Association*, 809 F.2d 626, 630-631 (9th Cir. 1987); *Lew v. Kona Hospital*, 754 F.2d 1420, 1423 (9th Cir. 1985). Summary judgment is not appropriate if "a result other than that proposed by the moving party is possible under the facts and applicable law." *See Aronsen v. Crown Zellerbach*, 662 F.2d 584, 591 (9th Cir. 1981), *cert. denied*, 459 U.S. 1200 (1983).

2. Six-Month Limitation Period in Employment Contract

The employment contracts entered by these plaintiffs each included a paragraph on disputes that states in part, "[a]ny claim for money arising out of this agreement or employment relationship between crewmember and owner shall be made in writting [sic] within six (6) months after this agreement is completed or terminated; otherwise, such claim shall be waived." Affidavit of Larry D. Sund, Exhibit A, ¶ 15 (crewmember contract of Rita Fuller). Whether the six-month limitation provision is enforceable is a matter of law appropriate to resolve on a motion for summary judgment.

The various employment contracts at issue here cover voyages of the MICHELLE IREME between September 23, 1989, and November 21, 1990. Plaintiffs filed this action on October 16, 1991, nearly eleven

months later. Defendants argue that plaintiffs' claims are barred as having been brought beyond the six-month period specified in their contracts. Plaintiffs, on the other hand, argue that the six-month limitation period in P15 of their employment contracts is unenforceable for three reasons. First, plaintiffs argue that the doctrine of laches governs the limitation period for bringing suit in admiralty cases and that only Congress, not the parties, can impose a different limitation period. Second, plaintiffs argue that P15 is, essentially, a contract of adhesion that was not adequately addressed by defendants either at the time plaintiffs signed their contracts or at the various orientation sessions held for these employees. Third, plaintiffs argue that, even if such a limitation provision were generally valid, it should not be applied in this case because six months is

an unreasonable period of time for plaintiffs to discover whether the estimate used by defendants to pay crew shares was unreasonably low.

a. Application of Doctrine of Laches

Ordinarily, absent a statutory limitation period, the doctrine of laches governs the period in which an admiralty suit must be brought. *See Sea Quest Marine Inc. v. Cove Shipping, Inc.*, 474 F. Supp. 164, 167 (W.D. Wash. 1979). A claim is barred by laches only if the plaintiffs' delay in bringing suit is unexcusable and defendants are prejudiced by the delay. *Espino v. Ocean Cargo Line, Ltd.*, 382 F.2d 67, 69 (9th Cir. 1967). Courts consistently have refused to apply state statutes of limitation to admiralty actions. *See Pierre v. Hess Oil Virgin Islands Corporation*, 624 F.2d 445, 450 (3d Cir. 1980); *Sea Quest Marine, Inc.*, 474 F. Supp. at 167 (holding that Washington's

general three-year statute of limitations did not bar claim made within admiralty jurisdiction).

Plaintiffs argue that, because only Congress may enact periods of limitation for admiralty suits, the contractual limitation period contained in the contract is invalid and the doctrine of laches must govern the time period within which plaintiffs must bring this action.

Plaintiffs' argument, however, is incomplete. In cases where courts have declined to impose state statutory limitation periods to admiralty claims, they have focused on the need for the limitation period to be addressed directly to admiralty jurisdiction. There is no basis to conclude, from these cases, that the parties cannot contractually set out a limitation period. Like statutes of limitation set out in maritime statutes, a provision in a contract between a fish-

erman and his vessel limiting the period within which a wage claim must be brought is addressed directly to an admiralty claim. In a different admiralty context, involving a breach of a contract action on the sale of some goods, the Second Circuit upheld a contractual limitation period even where a federal statute provided for a longer limitation period. *See Schnell v. United States*, 30 F.2d 676 (2d Cir.), *cert. denied*, 279 U.S. 858 (1929) (three-month limitation period contained in bill of lading upheld despite applicable Admiralty Act two-year statute of limitation). This court concludes that the doctrine of laches need not, and in this case must not, be applied where the parties have set forth a different contractual limitation period.

b. Contract of Adhesion

Plaintiffs next argue that the six-month limitation period is unenforceable because it was not entered into knowingly or for sufficient consideration. Plaintiffs argue that this court must examine with strict scrutiny the terms of contracts entered into by individual seamen. Plaintiffs argue that individual seamen are viewed as wards of the court and that, if there is an inequality in bargaining power between the seaman and the vessel representatives and the contract contains a sacrifice of rights by the seamen without extraordinary benefits, the contract must be found unreasonable and unjust. *Harden v. Gordon*, 11 F. Cas. 480, 485 (C.C.D. Maine 1823) (Story, J.). Plaintiffs further argue that defendants have the burden of showing that the seamen fully understood what rights they were giving up when they signed a contract

putting limitations on their ability to bring wage claims, *Harmon v. United States*, 59 F.2d 372, 373 (5th Cir. 1932), and that defendants' burden is particu-\ larly difficult to meet where the seamen are not represented by an attorney or other competent adviser. *Hume v. Moore-McCormack Lines*, 121 F.2d 336, 347 (2d Cir. 1941), *cert. denied*, 314 U.S. 684, (1941).

Plaintiffs argue that, because of the procedures used by defendants during the contract signing process, defendants cannot carry this burden. Specifically, plaintiffs state that the vessel representatives failed adequately to explain the limitation provision, and that plaintiffs did not understand they were giving up any rights in the limitation provision. Plaintiffs state that, although there were various orientation sessions at the times crewmembers signed their contracts, the

limitation provision was never specifically addressed and none of the more than 400 crewmembers who participated in the voyages that are the subject of this lawsuit ever asked questions about the limitation provision. *See* Declaration of Rita Fuller, ¶ 3; Declaration of Babbette THayer, ¶¶ 4-6. Plaintiffs further state that they were not provided with copies of their contracts so they could later examine them to determine whether there was any limitation provision. Declaration of Rita Fuller, ¶ 2; Declaration of Babbette Thayer, ¶ 2.

Finally, plaintiffs argue that there was insufficient consideration for the limitation provision because it was not included in the contract as the result of a collective bargaining process. Plaintiffs argue that such limitation provisions are upheld only where they are part of a collective bargaining agreement. See

Collins v. State of Alaska, 621 F. Supp. 722 (W.D. Wash. 1985), *aff'd*, 823 F.2d 329 (9th Cir. 1987).

Again, plaintiffs' arguments are without merit. Plaintiffs would require too much of the bargaining process. Furthermore, plaintiffs ignore the educational and experience differences between seamen in the 1800s and early part of this century, when Justice Story wrote in Harden that seamen should be considered wards of the court, and seamen in the 1990s. First, plaintiffs misstate the circumstances under which defendants carry a heavy burden to show that seamen understood that they were giving up a valuable right regarding wage claims. *Harmon* and *Hume* both involved contractual provisions under which seamen gave up their right to any wage claim. The contractual provision in this case involves only a limitation on

the period in which plaintiffs must bring their wage claim.

Second, plaintiffs had sufficient opportunity to read and understand the limitation provision prior to signing the contracts. Plaintiffs do not dispute that special orientation sessions were held at which they were given the opportunity to go over their contracts with defendants and at which they were offered copies of their contracts. These particular plaintiffs are fairly well educated. All three are either high school graduates or have received a high school general equivalency diploma. Thus, these plaintiffs certainly have a sufficient educational background to enable them to read and understand their contracts when the contracts were made available to them.

Third, for at least one other category of seamen, merchant seamen, terms of individual written employment contracts are

enforceable unless there has been some overreaching or the provision is contrary to law. *McDonald v. United States*, 292 Fed. 293, (2d Cir. 1923). In other maritime contexts, contractual provisions that specify how rights may be enforced have been routinely upheld absent overriding public policy interests against enforcement of the provisions. In *Lauritzen v. Larsen*, 345 U.S. 571, (1953), the Supreme Court upheld a choice of forum clause in a seaman's contract even though application of Danish law as specified in the contract had the effect of barring the plaintiff seaman's Jones Act claim.

Finally, outside of the admiralty context, a contractual claims limitation period need not be the product of collective bargaining to be enforceable. *Myers v. Western-Southern Life Ins. Co.*, 849 F.2d 259 (6th Cir. 1988) (upholding six-month limitation period in plaintiff's

employment contract with insurance company). The court can find no reason to apply a different standard in an admiralty case. Whereas collective bargaining often has the effect of ensuring more leverage in the contract negotiating process for the employees, this court cannot determine that only limitations in a seaman's contract reached pursuant to a collective bargaining agreement are enforceable.

Although it certainly would have been beneficial for defendants to go over in detail every provision of the contract, in the circumstances of this case the court concludes that plaintiffs were given adequate opportunity to review and discuss their contracts prior to signing them. Representatives of the vessel were available to answer questions, and these plaintiffs, all of whom were fully capable of understanding the six-month limitation period, simply chose either not to attend

the orientation sessions or not to read and ask questions about their contracts.

c. Six-Month Period Unreasonably Short and Against Public Policy

Plaintiffs also argue that the sixmonth limitation period was unreasonably short and contrary to public policy as embodied in RCW 49.48. Plaintiffs argue that defendants' method of determining crew shares and that defendants' reticence in providing information regarding their method of accounting made it difficult for crewmembers to compare the estimated price used to settle their shares with the estimate used by other vessels or with market prices within the six-month limitation period. Plaintiffs argue that, despite their repeated requests for information from defendants, no such information was forthcoming until this lawsuit was filed.

Plaintiffs explain that, under Washington law, a contractual limitation pro-

vision is unenforceable if it undermines the purpose of any statute that provides a right or cause of action that is in furtherance of an important public policy. *Signal Insurance Co. v. Walden*, 10 Wn. App. 350 (1973). Plaintiffs conclude that because RCW 49.48 embodies the public policy of protecting wage earners, *Smaby v. Shrauger*, 9 Wn.2d 691, 699 (1941), the contractual six-month limitation period violates public policy.

These arguments are, again, unavailing. Six months is precisely the period for bringing an *in rem* claim for unpaid wages contemplated by 46 U.S.C. § 10602(a). Congress obviously has determined that six months is not an unreasonably short period of time within which a fisherman must bring an action for wages. As a result, this court fails to see how a six-month period, as a general rule, can be either unreasonably short or in violation of

public policy. In addition, on the facts of this case, the six-month limitation period clearly is not unreasonably short. Plaintiffs had sufficient opportunity to discover all information they needed to pursue this action within the six-month period. Although the fish from a particular voyage may not be sold until months later, each crew typically is paid within two to four weeks of the end of a voyage. The owners of the vessel are paid a provisional settlement for the catch by a Japanese broker at the time the fish are offloaded in Alaska. The crewshares are estimated based on this provisional settlement figure. *See* Declaration of Clemens H. BArnes, Exhibit 1 (affidavit of Stanley Simonson). Thus, plaintiffs have an idea of what their crewshares will be within a month of the end of the voyage. That gives plaintiffs five months in which to determine whether these crewshares are

in violation of any portion of their employment contracts.

In addition, plaintiffs Rita Fuller and Tom Wilson were class members in the *Adamek* litigation and had actual knowledge through that action that the pay practices of defendants were being challenged for voyages prior to November of 1989, nearly two years before this action was filed.[2] Furthermore, the *Adamek* plaintiff class was represented by the same attorney representing plaintiffs in this action.[3]

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[2]If the rule of discovery is used to mark the time when the six-month limitations period begins, as plaintiffs argue it should, the *Adamek* litigation clearly put plaintiffs on notice of a potential cause of action following the first voyage during the period covered by this lawsuit and far more than six months prior to the time plaintiffs filed this action.

[3]Defendants urge the court to rely on cases upholding contractual limitation provisions for filing actions in other contexts such as sales of property, injury to passengers where limitation clauses were included in passenger tickets, damage to cargo and other employment contexts. *See, e.g., Breeland v. Southern Pacific Company*, 231 F.2d 576 (9th Cir. 1955) (former railroad employee's wrongful discharge suit barred by one-year limitation clause contained in collective bargaining agreement); *Myers v. Western-Southern Life Ins. Co.*, 849 F.2d 259 (6th Cir. 1988) (former employee's civil

As the court determines as a matter of law that the six-month contractual limitation provision for bringing claims under plaintiffs' employment contracts is enforceable, defendants are entitled to summary judgment of dismissal of all of plaintiffs' claims as they were brought beyond the six-month period.

3. Statutory Six-Month Limitation on *In Rem* Claims

Defendants next argue that plaintiffs' *in rem* claims also are precluded by the six-month statute of limitations set out in 46 U.S.C. § 10602(a). Plaintiffs, on the other hand, contend that they are bringing their *in rem* cause of action under general maritime law rather than under 46 U.S.C. § 10602(a). They further

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rights action barred by six-month clause contained in employment agreement); *Coleman v. Norwegian Cruise Lines*, 753 F. Supp. 1490 (W.D. Mo. 1991); *Nieto v. S.S. Tinnum*, 170 F. Supp. 295 (S.D.N.Y. 1958). The court finds these cases only minimally instructive.

argue that, in passing the predecessor to § 10602(a), Congress did not intend to supplant the fisherman's general maritime remedy against his vessel for his share of the sale of the catch.

Plaintiffs' argument would undermine 46 U.S.C. 10601, *et seq.* altogether. Under § 10601, for voyages of vessels of more than twenty gross tons, the vessel master is to enter into a written agreement with each seaman. The agreement is to state the period of effectiveness of the agreement, the terms of compensation and any other agreed terms. Section 10602(a) provides that any action based on an agreement made pursuant to § 10601 must be brought within six months after the sale of the fish. Section 10602(b) states that a vessel owner is to produce an accounting of the sale and division of proceeds under any agreement pursuant to § 10601. Section 10602(c) provides that "[t]his section

does not affect a common law right of a seaman to bring an action to recover the seaman's share of the fish or proceeds."

Plaintiffs conclude that this last section, § 10602(c), permits a seaman to choose between bringing an action under § 10602(a) and under general maritime law. Apparently in anticipation of the argument that no seaman would choose to proceed under the six-month limitation in § 10602(a) rather than under general maritime law, plaintiffs argue that the special remedy afforded by § 10602(b)(1) when the vessel owner fails to give an accounting provides the incentive for individuals to proceed under the statute.

The court finds plaintiffs' argument unpersuasive. Where Congressional legislation directly addresses a question, that legislation preempts existing federal common law, *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618. In *Mobil Oil* the

Supreme Court held that plaintiffs' damages were limited to those specified in the Death on the High Seas Act and that, because the Act preempted general maritime law, plaintiffs could not recover additional damages not allowed by the Act. *Id.* Similarly in this case, where a written agreement has been concluded pursuant to § 10601, plaintiffs' sole remedy is provided by § 10602(a) and must be brought within six months. Section 10602(c) is best understood as preserving a seaman's common law right to bring an action for wages where there is no written agreement under § 10601.

Accordingly, the court concludes that plaintiffs' in rem claims are precluded as having been brought beyond the six-month statutory limitation period of 46 U.S.C. § 10602(a).

4. Plaintiffs' Alaska State Claims

Defendants finally contend that plaintiffs' claims based on the Alaska minimum wage and overtime statute would be precluded on the ground that they are barred by federal admiralty law. The plaintiff class in *Adamek* also raised Alaska minimum wage and overtime claims, which this court rejected on the ground that application of such state laws would undermine the uniformity of federal admiralty laws. (*See* Order re: Motions for Summary Judgment, Class Certification and to Fix a Special Bond at 15-18.)

In reaching its decision in *Adamek*, this court relied in part on a decision by the Central District of California in *Pacific Merchant Shipping Ass'n v. Aubry*, 709 F. Supp. 1516 (C.D. Cal. 1989). *Aubry* involved claims under California labor statutes by California resident seamen working largely on state territorial wa-

ters and involving significant state interests -- cleaning oil spills to protect the California coast. On appeal, the Ninth Circuit reversed, holding that the Federal Labor Standards Act did not "preclude enforcement of California's overtime provisions to protect the California resident seamen in this case." *Pacific Merchant Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1419 (9th Cir. 1990). The Ninth Circuit developed a general rule in *Aubry* that "states may supplement federal admiralty law as applied to matters of local concern, so long as state law does not actually conflict with federal law or interfere with the uniform working of the maritime legal system." *Id.* at 1422. The Ninth Circuit concluded that, because the *Aubry* plaintiffs were "resident" employees of California who did not engage in coastwise or international voyages, application of the California labor statutes would not

interfere with uniform application of federal admiralty law.

This court finds that the Ninth Circuit decision in *Aubry* does not compel a different result here than in *Adamek*. Unlike the California resident fishermen in Aubry, these plaintiffs are engaged in coastwise voyages and their predominant job situs is the high seas rather than the territorial waters of the state of Alaska. *See Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 420-21 (1976) (ruling that predominant job situs is controlling factor in determining whether a state can apply its labor laws to a given employment relationship and noting the difficulties that employers would face if they had to take into consideration the various states in which a vessel might have contact). The defendant vessel travels from Washington to Alaska. The fishermen employed by the

vessel are not Alaska residents and, generally, they begin their employment with defendants in the Seattle area. At the conclusion of their employment aboard the vessel, they are typically flown back to Seattle. Their permanent or long-term contact with Alaska is minimal.

Accordingly, plaintiffs' claim under Alaska overtime and minimum wage statutes is unavailing, and defendants' motion for summary judgment must be granted. As the court has determined that summary judgment is appropriate on the grounds that the Alaska statutes interfere with the uniform working of the federal admiralty system, it need not consider defendants' arguments that this court must apply Washington rather than Alaska law to any state claims.

B. Plaintiffs' Motion for Class Certification

As the court has determined that defendants are entitled to summary judgment of dismissal of all claims against them, plaintiffs' motion for class certification will be stricken as moot.

III. CONCLUSION

It is hereby ordered, adjudged and decreed that:

(1) defendants' motion for summary judgment of dismissal of all claims against them is granted; and

(2) plaintiffs' motion for class certification is stricken as moot.

DATED at Seattle, Washington this 9th day of March, 1992.

/s/ Barbara J. Rothstein
BARBARA J. ROTHSTEIN
CHIEF UNITED STATES
DISTRICT JUDGE

CREWMEMBER CONTRACT

THIS CONTRACT for employment as a Crewmember is entered into between Michelle Irene Joint Venture ("Owner"), the Owner of the F/T Michelle Irene, official number 940-866, through its vessel manager Golden Age Fisheries ("Vessel Manager"), and Rita Fuller ("Crewmember").

1. RECITALS: The Owner has retained a Vessel Manager to act on its behalf in directing the day-to-day operations and maintenance of the Vessel, and to conduct the hiring and firing of crew. The Vessel Manager, in turn, may appoint its own representatives, including the ship's officers, to supervise and manage operations and upkeep of the Vessel. The Vessel Manager has agreed to hire the Crewmember on the terms and conditions contained herein.

2. DURATION OF CONTRACT: The term of this Contract shall commence on the day

the Vessel Manager or its representative directs the Crewmember to begin preparing the Vessel for departure, or the date upon which Crewmember actually boards the Vessel, whichever occurs first.

The contract will terminate upon the earlier of:

1) Ninety (90) days from the date the contract commences; or

2) The date the Vessel Manager or his representative gives notice, written or verbal, of termination of the employment set forth in this agreement.

The 90-day Contract period will consist of a series of trips, a trip being defined as the period at sea between product offloads. If at the end of the 90-day period covered by this Contract the Vessel has not completed its current trip, the terms of the Crewmember Contract will be auto-

matically extended until the Vessel returns to port and has offloaded its product. Crewmember may request that this Contract be renewed, but the decision to rehire, renew or extent [sic] this contract rests solely with the Vessel Manager and must be in writing by both parties.

The Crewmember understand that he/she is subject to termination when, in the sole judgment of the Vessel Manager, it is in the best interest of the Vessel to do so.

3. DUTIES: Crewmember agrees to perform such duties as may be requested by the Vessel Manager or its representatives. These duties may include those jobs associated with fishing and processing operations; maintenance and upkeep of the Vessel and its equipment, gear and machinery; and the sanitary and orderly appearance of the Vessel and its accommodations area.

The Crewmember agrees to assist in readying the Vessel and its gear and equipment for each trip, and in loading aboard supplies and equipment, as necessary. At the end of each trip, the Crewmember agrees to assist in unloading and cleaning the Vessel.

4. TRANSPORTATION: Transportation from Seattle to the Vessel will be provided by the Owner. If the Vessel is departing from Seattle, transportation to the fishing grounds will be provided on the Vessel.

Return Transportation will be provided at the Owner's expense if the Crewmember completes the terms of this Contract. If the Crewmember fails to complete the terms of this contract, Crewmember will be responsible for return transportation. When the Vessel is returning to Seattle, trans-

portation will be provided on the Vessel. Return travel at the end of the Contract period must be completed on the next available flight, unless a delay is due to circumstances such as weather, or for the benefit of Owner or Vessel Manager.

5. QUALITY CONTROL: The quality of product produced is of primary importance to the financial success of every fishing trip, and is a determining factor in the crewshare earned. Crewmember attention to product quality, good personal hygiene, health codes and processing area cleanliness and sanitation are required. No compensation will be paid to any Crewmember for product which is not saleable in the intended markets.

6. SAFETY: Crewmember agrees to exercise extreme care around machinery, near open holds, on slipper surfaces and in any

other potentially hazardous situation. Vessel Manager will furnish a hardhat and lifevest for use on deck. Crewmember agrees to wear the hardhat while on deck, while loading or offloading supplies and equipment, while moving about the Vessel in areas of low overhead and as otherwise directed.

Crewmember agrees to participate in all safety drills, and agrees to complete the North Pacific Fishing Vessel Owner's Association video safety course. Copies of the video and accompanying manual are available on the Vessel and at the home office in Seattle.

7. PHYSICAL CONDITION: Crewmember understand that working conditions aboard the Vessel, while designed and supervised to be safe, are difficult, strenuous and sometimes hazardous. Before accepting

employment, Crewmember has considered the risks associated with living and working aboard the Vessel, at sea and in port.

Crewmember represents and warrants that he or she is physically and mentally prepared and able to handle all assigned work for the full term of this agreement and that all statements contained in the medical forms furnished are true, complete and accurate in all respects. Falsification of such records is grounds for immediate dismissal.

8. INJURY: Crewmember agrees to immediately report any accident, illness or injury to Crewmember's supervisor or master and to fill out all required injury and medical report forms immediately and accurately. Before leaving the Vessel upon completion of this Contract or upon

termination, Crewmember agrees to complete and sign an "Employee Status Change" form.

Should Crewmember be entitled to maintenance as a result of injury or illness, maintenance will be paid at the rate of $15.00 per day.

9. REGULATORY VIOLATIONS: Crewmember expressly agrees not to violate, or cause the Vessel to violate, any federal, state or local statute or regulation, including but not limited to, regulations forbidding the retention or destruction off any prohibited species, such as halibut, salmon and crab. Crewmember further agrees that he/she will not seek such potential earnings that may be lost due to seizure of catch as a result of such violation.

Owner, Vessel Manager and Crewmember are committed to maintaining a DRUG

FREE/ALCOHOL FREE ENVIRONMENT. POSSESSION OR USE OF ALCOHOL OR DRUGS WILL RESULT IN IMMEDIATE DISMISSAL. Crewmember agrees that Owner and Vessel Manager may search Crewmember and Crewmember's possessions for drugs or drug paraphenalia, and consents to take drug tests upon request by Vessel Manager.

Crewmember agrees to pay for all damages suffered by the Owner, Vessel Manager, Master and crew resulting from Crewmember's violation of law, regulation or of the above anti-drug policy of the vessel.

10. COMPENSATION: Crewmember will be paid his/her assigned crewshare based on the "Adjusted Gross Stock" of the Vessel for each trip. For the purposes of this Contract, "Adjusted Gross Stock" means the estimated ex-vessel fair market value of

saleable product, FOB Alaska, less the cost of surimi additives.

The value of each crewshare shall be determined by dividing 26.086% of the Adjusted Gross Stock by the total number of crewshares held by all crewmembers and officers on board for that trip.

No compensation will be paid for the time that a Crewmember is not on board the Vessel and in the employ of the Owner. In the event of termination before conclusion of a trip, compensation will be based upon the "Adjusted Gross Stock" for the time the Crewmember was actually on board and in the employ of the Owner. Crewmember will generally be paid his/her share, less authorized deductions, within 2 to 4 weeks following each trip.

11. BONUS: Crewmember who satisfactorily completes the Contract will receive a bonus in the amount of $15% of their total earnings for the contract period. Payment will generally bed made 2 to 4 weeks following Crewmember's completion of Contract.

12. DEDUCTIONS FROM EARNINGS: Crewmember hereby expressly authorizes the Vessel Manager to deduct from the Crewmembers compensation the following items:

a. Value of damage caused by Crewmember to the Vessel and/or its gear and equipment, supplies, catch or product, other than normal wear and tear;

b. Crewmember's ship store purchases;

c. Room and Board. Each Crewmember receiving a crewshare will contribute to the cost of provisions (eg,. groceries) at

a rate of $15.00 for each day of the Crewmember Contract;

d. Packaging material expense. The total cost of all packaging materials used during a trip will be divided equally among Officers and Crewmembers;

e. Amounts advanced to or for the benefit of the Crewmember;

f. All sums required by state and federal law;

g. Room, Board and other expenses or loss of revenue as per Paragraph 14 (Termination).

In the event that deductions exceed the compensation owed to the Crewmember, Crewmember agrees to promptly pay the Vessel Manager the difference between deductions and compensation.

13. ADVANCES: Any advance of earnings made to Crewmember shall be regarded as

loans which are due upon written or verbal demand by Vessel Manager.

14. TERMINATION: The Vessel Manager, his representatives or Crewmember may terminate this Contract at this Contract at any time, with or without cause. Crewmember understands that if he/she quits or is terminated, his/her compensation is based on the Adjusted Gross Stock for the period of employment only. If termination or quiting occurs prior to fishing operations, Crewmember shall not be entitled to any compensation. Crewmembers who quit or are terminated before the end of the Contract period are not eligible for a bonus.

If Crewmember quits or is terminated <u>for cause</u>, Crewmember agrees to pay for room, board and any other expense or loss of revenue incurred by Owner on account of the Crewmember, from the date of termina-

tion until the crewmember leaves the Vessel.

15. DISPUTES: In the event of any dispute or controversy arising out of, in connection with, or in relation to this Contract, the parties agree that this Contract shall be governed by the laws of the State of Washington and that all disputes shall be decided by the courts in King County, Washington. Any claim for money arising out of this agreement or employment relationship between crewmember and owner shall be made in writting [sic] within six (6) months after this agreement is completed or terminated; otherwise, such claim shall be waived.

16. ENTIRE AGREEMENT: This contract is the entire and only agreement between the Crewmember and the Owner. There are no other express or implied agreements. Any

prior written or verbal statements are hereby superseded. This agreement shall not be modified amended or otherwise changes except in writing, signed by both Crewmember and an authorized representative of the Owner.

Both Crewmember and the Vessel Manager's designed representative have read and agreed to the foregoing terms and conditions on this 18th day of NOV, 1989.

CREWMEMBER: NAME Rita Fuller (PRINT)
SIGNATURE /s/ Rita Fuller
CREWSHARE 1.0

VESSEL MANAGER: NAME Bill Barnes (PRINT)
SIGNATURE /s/ Bill Barnes
TITLE Purser

PAYROLL DISTRIBUTION TO FOLLOW IN FAXED LETTER FROM RITA.

CREWMEMBER INFORMATION

Name: Fuller Rita
(last) (first) (middle initial)

Mailing Address: P.O. Box 1515
Waldport Org

Telephone Number: 503563-3796
Birthdate: 5/20/57
Social Security #: 494-64-9351

ARE YOU A U.S. CITIZEN? Yes No

If not, are you legally authorized to work in the U.S.? Yes No.

Have you completed the I-9 Form, page B-3 of this packet? Yes No

IN CASE OF EMERGENCY CONTACT
name: Roger King
address: P.O. Box 1515
Waldport
telephone: 503-563-3796

* * * * * * * * * * * * * * * * *

FOLLOWING ITEMS TO BE COMPLETED BY VESSEL MANAGER

Position: 1st Cook Share 1.0

Point of Hire: Seattle Date of Hire: 11/18/89

NOTE: Share amount indicated here will be honored through the term of this contract unless specifically changed on the Employee Status Change Form.

Has employee filled out:

X I-9 Certificate of employment eligibility

___ employment application

_X_ medical/health history

_X_ IRS W-4 withholding form

_X_ Alaskan Fishing Crewman's License

_X_ Payroll/Newsletter Distribution Request

C-18

FULL SHARE CREWPERSON

1. Is able to handle all fishing related jobs efficiently and professionally.
2. Has a good attitude.
3. Handles necessary jobs without having to be told.
4. Works well with and cooperates with shipmates.
5. Works in a responsible and professional manner.
6. Takes responsibility for maintaining gear, work area, and living quarters in ship shape manner.
7. Follows rules.
8. Handles product with care.
9. Takes responsibility for completing daily work as quickly as possible.

F/T MICHELLE IRENE
Crew Share Settlement
From: 11-17-89 to 12-02-89
Name: FULLER, RITA M.

Production	Pounds Produced	Extended Value
Totals	687.614.1	401,817.90
Your Crew Share: 1.15	0.003163%	1,270.95
Total Earnings		1,270.95
Less Grocerys @15/day x 16 days	240.00	
Less Packaging Expenses	0.00	
	240.00	
Other charges:		
Cash Draws	800.00	
Personal Charges	45.86	
Travel Allowance	74.00	
Total Before Taxes	919.86	
		111.09

Name: FULLER, RITA M.

Accumulated bonus this trip is $190.67